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Commitment issues: How apartment buyers are playing the field with multiple bids



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All's fair in love and war, and apparently, New York City real estate. Now that the market favors them, apartment buyers are emboldened and are increasingly playing the field by putting in offers on multiple properties simultaneously, brokers and real estate lawyers say. It's a strategy that requires some finessing and awareness of the pitfalls.

Some, but not all brokers who Brick Underground spoke to are seeing buyers offering multiple bids, which they say is emblematic of a swing of the pendulum now that sales have

dropped in both Manhattan and Brooklyn. The number of sales in Manhattan fell 25 percent over the prior year, according to Douglas Elliman's first quarter market report, the lowest-volume sales quarter in over six years, and that was accompanied by a slight dip in median sales prices. Apartment prices in Brooklyn are still setting records, but the number of sales fell a dramatic 13.9 percent to start the year, due to a chronic lack of inventory, according to Douglas Elliman.

Leveling the playing field

The slower market has dampened the sense of urgency that characterized the past few years, giving buyers a sense that they have more control of the real estate game now. By bidding on a few properties, buyers can see which seller is going to "play ball," and give them the best value, said Christopher Kromer, an agent at Halstead.

"Sometimes that's on properties well within their budget, but I also see buyers who place a bid on their dream property that's over budget and they're hoping to see what type of flexibility or negotiability can be had to make it a bit more within their reach," Kromer says. Other factors are at play as well, he says, including a gap between sellers and buyer's expectations, and anxiety in uncertain times. Case in point: Jonathan Miller of appraisal firm Miller Samuel says that changes to federal tax law and an uptick in mortgage rates have spooked Manhattan apartment buyers.

Turning the tables

In some cases, this is a matter of buyers who have lost out on bidding situations in the past turning the tables on sellers. But more often, according to Kromer, first-time buyers are making this bold move.

"The anxiety of the uncertain market is compounded by the natural nervousness of buying a home for the first time and not necessarily trusting the process," he says. "But I've also seen second- or third-time buyers doing it at higher price-points, because there is more negotiability to be had there, and it's a longer sales cycle."

It's not always a good look for buyers, but on the flip side, sellers often encourage bidding wars, says Bevan Versfeld, an agent at DJK Residential.

"It is not easy to find two apartments that fit your budget and needs, but when you do, why not make the extra effort so that the ball is in your court and give yourself options?" he asks. "It does become in bad taste if you are just wasting everyone's time and bottom feeding for an unrealistic price."

He continues, "For most co-ops, there is usually a base price limit that the co-op board would accept. They won't accept anything below it even if the owner does. If you are using an experienced broker, they can give you a good idea of the price range you need to get the best deal possible."

Another broker says this strategy is the result of how deals are done in New York. "Deals are never binding. Until after due diligence, there's is really no way to force a seller to take your offer over another or for a buyer to move forward on an accepted offer vs. taking another home elsewhere," says John Harrison, a broker at CORE.

As a result, he says, sellers are parked on their listings, waiting for multiple offers to come in.

"Even if they 'accept' one, they aren't really required to sign a contract with that buyer," he says. "Nobody can blame a seller for wanting to do whatever they can to earn the best and highest deal, but the pendulum swings both ways. In theory, that purchaser can also get an accepted deal with a seller but ultimately decide to back out when their dream home comes onto the market two days later and their attorney hasn't even received a contract for review."

It all comes down to a signed contract

Buyers are doing this dance in the window before a contract gets signed.

That's because when a seller accepts an offer on an apartment, a verbal acceptance is not legally binding. Until the contract is signed, there is no legal obligation between buyer and seller, and interestingly, as attorney Adam Stone writes in this Brick Underground article, "a seller isn't even legally obligated to tell buyers that there is more than one accepted offer."

Peter L. Graubard, an attorney at real estate law firm Graubard & Blumenfeld, says he's not seeing many buyers offering multiple bids.

"It's not something running rampant through New York City," he says. "There's nothing legally prohibiting someone, but they can't sign a contract until they know which one they want to pull the trigger on. Once a seller countersigns a contract, it is too late to pull out." Unlike buying real estate in other areas, in New York, attorneys typically negotiate purchase agreements. Without a lawyer, a bid "doesn't constitute a serious offer," Graubard says.

Problems can also arise if multiple bids were accepted and the bids were made electronically, according to attorney Rob Braverman, a principal with the law firm Braverman Greenspun. It is theoretically possible "that there would be enough info exchanged between the parties to create a binding contract and a buyer could wind up be contractually obligated to purchase multiple apartments," Braverman says. He hasn't yet encountered such a situation "and it could easily be avoided by putting qualifying language in all bid-related communications."

The sky isn't falling

Robert Dankner, president of brokerage Prime Manhattan Residential, says just because some buyers may be making multiple offers doesn't indicate that there's something wrong with the New York residential market, "but because there's softness, buyers feel there's some distress, which there's not."

In essence, there are two ways to view this practice, and both come down to intent. Making lots of offers simply to capitalize on the market's weakness is what he calls "bottom fishing" and the people who do this, he says, "are never going to be successful."

On the other hand, there's nothing wrong with hedging, Dankner says.

"Often a buyer will like different properties—one or two offers is not a bad practice if done with the right intent," he says.

You may get lucky, or you may lose out

Even if one is maximizing their options, Kromer of Halstead says the advantages of multiple bids are outweighed by the disadvantages. You may get lucky, he says, "but on the other hand, you may end up losing out on the one you really like" as negotiations get drawn out and the apartment you want is left open to competitive bids.

He makes an analogy to dating multiple people to make sure you know what you want before settling down with The One. And just like dating, the process is emotionally exhausting.

"In my opinion, a bid is a good faith expression of commitment. I have my needs and point-of-view, and you have yours, and we'll do our best to seeing if we can find some middle ground," Kromer says. "If not, we'll move on to the next one and try there. I would never impose morality or ethics on someone—I leave that to my clients... but for me, there's something to be said for the spirit and integrity of good faith negotiations."